IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3015 OF 2004

IN

TESTAMENTARY SUIT NO. 6 OF 1997

IN

TESTAMENTARY PETITION NO. 830 OF 1996

Raymond Roque Tixeira .. Petitioner.

vs.

Maxy Roque Tixeria

& Ors. .. Caveators.

Petitioner in person.

C. D'Souza for defendant nos. 2 & 3.

Mr. K.B. Adyanthaya for D. No. 1.

CORAM : S.U.KAMDAR, J.

DATE : 16th August, 2005.

P.C.

. The present motion has ben initiated by the petitioner seeking directions in respect of various amounts which are lying in the fixed deposit with various nationalised banks as well as in respect of National Saving Certificates as mentioned in prayer clause (a) of the said notice of motion. He has also prayed for reliefs in respect of the amount

lying with various Mutual Funds and belonging to the deceased. In prayer clauses (b) and (c) investment is sought of the aforesaid amount in a better scheme. By prayer clause (d) of the motion the petitioner is seeking that Caveator No. 1 be directed to deposit in this Hon'ble Court interest at the rate of 12% per annum for the loss incurred on the moveable properties and by prayer clauses (e), (f) and (g) the plaintiff prays for deposit of amount towards compensation and mesne profits. This motion has been taken out in a probate petition filed by the petitioner in respect of a last will and testament of his deceased father.

2. In so far as prayer clause (a) is concerned, the Postal Authorities with whom the said National Savings Certificates were invested are directed to deposit the said amount in this Court within four weeks from today. On such deposit the office of the Prothonotary and Senior Master is directed to invest the same in fixed deposit with any nationalised bank initially for a period of one year and thereafter renew the same from time to time till further orders. In so far as investment in the nature of fixed deposits and mutual funds are concerned they are also directed to similarly deposit the amount in the Court with Prothonotary & Senior Master who will invest the said amount in fixed deposit as directed above.

3. The petitioner has also brought to my attention that the deceased had left a flat No. A/12 situated at 4h floor, Hiramoti Nagar, Adjacent to D'Souza Wadi, Shivajinagar, Wagle Estate, Thane 400 604. It has been brought to my notice that the Caveator No. 1 has given an undertaking to the Criminal Court, namely, Private Complaint No. 350/93. An order dated 22.4.1994 was passed by the said Court wherein it was inter alia recorded that the caveator no. 1 undertakes to compensate his father for all the losses incurred in the following manner.

1. To reimburse him for the loss of gold rings (2 Nos.).

2. To give no objection certificate/ declaration to enable the complainant to withdraw the amount withheld with UTI, CBI & LIC, Mutual Funds respectively.

3. To vacate possession of the flat in due course of time on obtaining alternative accommodation.

That undertaking was given on 22.4.1994. It is admitted position that the Caveator No. 1 has not

vacated the premises inspite of the fact that 11 years have expired of giving such an undertaking. Admittedly the said flat is forming part of the estate of the deceased. Thus the said flat is also required to be protected. The caveator no. 1 has no right to continue to occupy the said flat in view of his aforesaid undertaking. In view of the aforesaid, I appoint, Court Receiver, High Court, Bombay also in respect of the said flat bearing No. A/12 situated at 4h floor, Hiramoti Nagar, Adjacent to D'Souza Wadi, Shivajinagar, Wagle Estate, Thane 400 604. Further, the Court Receiver, High Court, Bombay, is directed not to dispossess the occupier/Caveator No. 1 and appoint him as an agent of the Court Receiver on usual terms and conditions as to the security and royalty. The aforesaid order is passed only because I do not wish to dispossess the defendant no. 1 at the interlocutory stage of the proceedings though in view of his undertaking he has no right to continue to occupy the same. Undertaking given by the defendant no. 1 is admitted. If the Caveator No. 1 is not willing to be appointed as agent of the Court Receiver, then in that event, the Receiver to seek further orders from the Court. Motion disposed of accordingly. No order as to costs.